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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 577/2013

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	N.B. (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	13 May 2013 (initial submission)
Date of present decision:	25 November 2015
Subject matter:	Complainant subjected to torture in pretrial detention
Substantive issues:	Torture – prompt and impartial investigation; forced confession; reparation
Procedural issue:	Admissibility
Articles of the Convention:	Article 22 (5) (a)

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 577/2013*

Submitted by:	N.B. (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	13 May 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 25 November 2015,

Having concluded its consideration of complaint No. 577/2013, submitted to it by N.B. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1. The complainant is N.B., a Russian national born in 1969, who at the time of submission was serving a prison sentence in correctional facility No. 29 (IK-29) in the Kirovsky region of the Russian Federation. He complained that he was beaten and tortured by police officers while in pretrial detention and that his complaints regarding torture have not been adequately investigated. The complainant's submission is addressed to the Committee against Torture, but he refers to violations by the State party of articles 3, 6, 13 and 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The complainant is not represented.

Facts as presented by the complainant

2.1 On 12 and 13 October 2008, the complainant was detained at the Regional Department of the Ministry of the Interior in Pyatigorsk, Stavropol Region. He was beaten by several police officers on his head and abdomen and received electric shocks, with the aim of extracting a confession. As a consequence, the complainant suffered partial hearing loss, pain in the heart area and one of his ribs was broken.

* The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

2.2 On 24 November 2008, the complainant submitted a complaint about the police officers' physical assaults to the Interregional Investigation Department in Pyatigorsk. On 25 November 2008, the Department ordered a forensic medical examination of the complainant, which confirmed his fractured rib and hearing impairment.

2.3 On 23 July 2010, the senior investigator of the Department dismissed the complaint and decided not to initiate a criminal investigation into the alleged torture. The complainant appealed and, on 22 October 2010, Pyatigorsk City Court declared the investigator's decision unlawful. It requested the director of the Department to remedy the situation. Owing to the lack of progress in the investigation, the complainant submitted a new petition to Pyatigorsk City Court. On 25 February 2011, the Court declared the investigator's inaction unlawful and requested the director of the Department to redress the violation of the law.

2.4 On 13 October 2011, the complainant appealed to the Prosecutor General of the Russian Federation, complaining about the lack of investigation into his complaint. The appeal was transferred to the Pyatigorsk City Prosecutor who, on 26 December 2011, concluded that the complainant's physical injuries had possibly been inflicted by police officers during his detention and requested a complementary investigation. On 2 January 2012, the Department again decided not to initiate criminal proceedings.

2.5 The complainant filed an appeal to the Supreme Court requesting the enforcement of the 22 October 2010 decision of Pyatigorsk City Court. The Supreme Court forwarded the appeal to Pyatigorsk City Court. In a letter dated 20 November 2012, Pyatigorsk City Court requested the director of the Investigation Department to act upon the complainant's request and inform him about the decision. However, the complainant received no response.

2.6 The complainant notes that the decisions of Pyatigorsk City Court of 22 October 2010 and 25 February 2011 were not implemented. He sent additional complaints to the Office of the Prosecutor General, the Chairman of the Investigative Committee and the President of the Russian Federation, but received no response from them.

2.7 The complainant was convicted by Pyatigorsk City Court on 26 August 2009 for committing crimes under articles 111.4 and 132.1 of the Criminal Code, and sentenced to 10 years' imprisonment. He filed a cassation appeal, which was rejected on 11 November 2009 by the Judicial Panel on Criminal Matters of Stavropol District Court. In his cassation appeal, the complainant alleged that he had been tortured until he agreed to write a confession. The Court considered that claim to be a strategy to avoid punishment, since the confession had been handwritten by the complainant during an interrogation in the presence of the complainant's lawyer, and neither the complainant nor the lawyer had raised any objection at the time.

The complaint

3.1 The complainant submits that he has exhausted all available and effective domestic remedies. He maintains that the national authorities have repeatedly failed to act on his repeated requests to implement the decisions of Pyatigorsk City Court of 22 October 2010 and 25 February 2011.

3.2 The complainant maintains that the beatings he endured from the police officers amounted to torture. In addition, he submits that the failure by the State party to prevent those acts constitutes a violation of his rights. The complainant also maintains that the failure of the State party to promptly, effectively and impartially investigate those acts amounts to a separate violation of his rights.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 4 April 2014, the State party submits that the communication is inadmissible because the complainant failed to exhaust the available domestic remedies. The State party maintains that all the complaints filed by the complainant before the authorities have been reviewed objectively, including by the courts.

4.2 The State party submits that the complainant was accused of committing crimes under articles 111.4 and 132.1 of the Criminal Code; a criminal case was initiated against him in accordance with the requirements of the law. The pretrial investigation established that on 1 November 2007, the complainant, while intoxicated, had a fight with K. and inflicted multiple injuries on him, which eventually led to K.'s death. After injuring and incapacitating K., the complainant also raped him. The complainant was convicted by Pyatigorsk City Court for those crimes.

4.3 The complainant's allegation that he was beaten by police officers on 12 and 13 October 2008 in order to extract a confession from him was refuted by the results of the pre-investigation verification that was conducted following his complaint. According to the conclusions of the forensic medical examinations conducted on 28 November 2008 and 31 May 2013 as part of that verification and the testimony of the expert conducting the examinations, the complainant's hearing loss was the result of an ear infection (cochleitis). Both examinations revealed a healed fracture of the eighth rib, which had resulted from a blow with a blunt instrument or from a fall. In the course of the pre-investigation verification, the medical records from 19 October 2008 of Federal Detention Centre No. 26/2, where the complainant was transferred from the temporary detention centre, were collected and examined. According to the records, the complainant was examined upon arrival, assessed as "practically healthy" and diagnosed with chronic alcoholism. On 23 October 2008, the complainant requested a medical examination, claiming that he had physical injuries. He was subjected to an examination by a commission consisting of four medical doctors the same day; the commission did not find evidence of any injuries.

4.4 The State party submits that the procedural documents contained no complaints from the complainant or his lawyer regarding allegations of violence. Prior to his conviction, the complainant made no other complaints to the investigator, the defender, the head of the investigative body, the prosecutor or the court.

4.5 In the light of the finding from the pre-investigation verification that police officers were not implicated in violence against the complainant, and the fact that the complainant had suffered a rib fracture, a criminal investigation into the allegation of intentionally inflicted moderate bodily harm was initiated by the Investigation Department of the Internal Affairs Department in Pyatigorsk.

4.6 The issues related to the exertion by police officers of moral and physical pressure on the complainant were also investigated in the course of judicial proceedings. The Court addressed the claims in its verdict, considering them to amount to a defence strategy.

4.7 Regarding the complainant's claim that the 22 October 2010 and the 25 February 2011 court decisions have not been implemented, the State party submits that that is not an accurate reflection of reality. Following the 22 October 2010 decision, on 17 February 2011, the deputy head of Pyatigorsk Interregional Investigation Department revoked the 23 July 2010 decision of the senior investigator of the Department not to initiate a criminal case, and returned the case for additional verification. An investigator of the Investigation Department of the Investigative Directorate of the Office of the Prosecutor of the Russian Federation was questioned, and testified that he and his colleagues had not exercised any moral or physical pressure on the complainant. The complainant's claim that he had been subjected to electric shocks was not confirmed by the forensic medical examination, which revealed no traces of such treatment on his body. Following the verification of the

complainant's claims, several decisions were issued refusing to initiate a criminal investigation, the latest on 7 November 2013, issued by the senior investigator of the Investigative Department of the Investigative Committee of the Russian Federation in Stavropol District. That decision was revoked by a decision of 5 December 2013 of the Stavropol District Prosecutor's office, which indicated that an additional investigation was required to identify the individuals who had been detained with the complainant at the time that he was injured, in order to question them and further clarify the circumstances surrounding the complainant's arrest. The State party submits that, at the time of its submission, that additional verification had not been completed; it was scheduled to continue until 3 March 2014. The verification was lengthy because the complainant presented new arguments that had not been verified previously.

Complainants' comments on the State party's observations and additional submission

5.1 In a submission dated 23 June 2014, the complainant challenges the State party's submission of 4 April 2014. He reiterates that he was subjected to torture when he was arrested on 11 October 2008 and taken to the Regional Department of the Ministry of the Interior in Pyatigorsk; the torture started immediately upon his arrival. A ruling ordering his arrest was not issued until 15 October 2008, his arrest therefore constituting a violation of the Constitution of the Russian Federation. He reiterates that he was convicted for a crime he did not commit and argues that the verdict against him was unlawful. He submits that he requested the court in Pyatigorsk to provide him with copies of the documents allegedly testifying to the violations of which he was accused, but his numerous requests were rejected.

5.2 In a submission dated 26 June 2014, the complainant submits that an order for a forensic medical examination of his injuries was issued on 14 June 2010, but that no such examination was conducted. Another such order was issued on 10 May 2013. He maintains that the only medical examination he underwent was conducted by a traumatologist in polyclinic No. 1 in Pyatigorsk, who concluded that the complainant had suffered serious injuries. The complainant also maintains that he was never examined by the forensic medical expert indicated in the State party's submission. He reiterates that he is still suffering as a result of the torture: he is unable to lie on his right side or on his stomach as his fractured rib did not heal correctly and now presses against his internal organs. He submits that if his hearing loss was the result of an infection, he should have been treated for the infection. He still suffers from hearing loss and he hears a permanent noise. He submits that by the time he registered his complaint regarding torture, the medical examination report issued by the traumatologist in the polyclinic had been "lost" and replaced by the medical examination report of the State-appointed expert. He maintains that for five years and seven months, his complaints regarding torture have been forwarded from one institution to another, but have not been reviewed on their merits. He submits copies of requests to the Supreme Court for supervisory review of his case and a copy of the letter dated 2 September 2010 from the Deputy Chair of the Supreme Court rejecting his request, as well as copies of requests for compensation for the fact that he has not been given copies of case materials and the 17 November 2011 Supreme Court decision refusing to grant such compensation.

State party's additional observations

6.1 In a submission dated 22 October 2014, the State party submits that Stavropol Regional Court confirmed the 26 August 2009 verdict of Pyatigorsk City Court sentencing the complainant to 10 years' imprisonment for committing a sexual assault and inflicting bodily injuries that resulted in death. Stavropol Regional Court stated that the complainant's arguments regarding the use of unlawful methods of investigation in his case were unfounded. In accordance with article 401.2.4 of the Code of Criminal Procedure of

the Russian Federation, court decisions may be appealed within one year of their entry into force. That term has expired. The complainant's complaints do not contain any information regarding the existence of new or newly discovered facts, which according to article 413 of the Code could serve as grounds to reopen the criminal proceedings in his case.

6.2 The State party also submits that, since it could not be established that police officers were responsible for the complainant's fractured rib, on 29 September 2013, a criminal case was initiated by the Pyatigorsk Department of the Ministry of Internal Affairs. At the time of submission of the State party's additional observations, the investigation was still ongoing. The State party reiterates that the communication should therefore be declared inadmissible under article 22 (5) (b) of the Convention for failure to exhaust domestic remedies. Moreover, the State party holds that the complainant is not a victim of violations of the Convention and his communication is a strategy to avoid having to serve his prison sentence.

Complainant's further submissions

7.1 In a submission dated 13 November 2014, the complainant argues that the Committee should request copies of the case files of the criminal case against him from Pyatigorsk City Court and copies of the documents related to verification No. 689/09 from the police. Those documents contain the results of the forensic medical examination, reflecting the damage to his health inflicted as a result of torture. He reiterates that his complaints submitted in the Russian Federation are not being reviewed, but are forwarded to the official about whose actions he is complaining. He requests a prison visit in order to demonstrate the damage inflicted on him through torture. He also requests the Committee to request the European Court of Human Rights to review his application, No. 33772/13, and to indicate all the violations of his rights under the Convention and domestic legislation, because the individuals who tortured him have never been punished. Indeed, one of them has been promoted.

7.2 In a submission dated 4 February 2015, the complainant argues that the State party provided incorrect information in its submission. He states that ever since the 26 August 2009 verdict was issued against him by Pyatigorsk City Court, he has been asking for copies of the relevant documents, but the Court continues to refuse to provide them. He maintains that that constitutes a violation of article 24.2 of the Constitution of the Russian Federation. He maintains that the Supreme Court has established that Pyatigorsk City Court committed procedural violations and that his verdict should be revoked on that basis. He reiterates that he was convicted based on a confession extracted by torture and that the courts ignored his complaints in that regard. He claims that the verification conducted by the Pyatigorsk Prosecutor's office on 27 and 29 November 2012 established that torture had been used, which should have been considered a newly discovered fact and should have served as a basis to reopen the case. He submits that on 16 September 2013, the Prosecutor of the Stavropol Region forwarded his complaint to the Pyatigorsk Prosecutor's office with instructions to conduct additional investigations, but the Pyatigorsk Prosecutor failed to do so. In addition, he argues that his verdict should have been reviewed after amendments were introduced in the Criminal Code of the Russian Federation.

7.3 In a submission dated 16 March 2015, the complainant submits that the individuals who subjected him to torture have not been punished, and reiterates his submission of 4 February 2015. He requests the United Nations High Commissioner for Human Rights to ask for the reopening of his criminal case and review of the verdict.

7.4 In a submission dated 23 March 2015, the complainant submits that one of the officers who tortured him has been promoted to head of the police department. Meanwhile, the complainant is still suffering from the consequences of the torture inflicted by that officer. He reiterates that he has a hearing loss, that his rib was broken and that as a result

of electric shocks, he has "heart ache". He reiterates some of his previous submissions. He states that he asked to be assessed by a medical commission and declared incapacitated; in 2013, he was examined by a prison doctor, who declared that his hearing loss was the result of an ear infection. He maintains that that conclusion was illegal and was made in order to cover up the crimes of the police officers. He asks the Committee to request his complete medical file from the State party and maintains that he is unlawfully deprived of disability certification.

7.5 In a submission dated 24 August 2015, the complainant reiterates some of his previous submissions.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee recalls that, under article 22 (5) (a) of the Convention, it shall not consider any communications from an individual unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee recalls its jurisprudence that examinations by the European Court of Human Rights constitute such a procedure.[1]

8.2 The Committee considers that a communication has been or is being examined by another procedure of international investigation or settlement if the examination by the procedure relates or related to the same matter within the meaning of article 22 (5) (a), which must be understood as relating to the same parties, the same facts and the same substantive rights. The Committee observes that on 18 April 2013, the complainant submitted an application to the European Court of Human Rights against the Russian Federation, which was registered under No. 33772/13, and which, according to information received in November 2015, is still pending before the Court. The Committee notes that the complainant did not submit his communication to it until 13 May 2013. The Committee also notes that according to the complainant's submission (see para. 7.1 above), he wanted the European Court to review the matter of violation of his rights in relation to torture and that in his complaint to the Committee, he made reference to articles 3, 6, 13 and 34 of the European Convention on Human Rights. Accordingly, the Committee concludes that the application to the European Court is based on the same facts, and relates, at least in part, to the same substantive rights as those invoked in the present communication. Having concluded that the same matter is being examined before the European Court, the Committee considers that the requirements of article 22 (5) (a) have not been met in the present case and that the complaint is thus inadmissible.[2]

8.3 The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (a) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.

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[1] See, for example, communication No. 247/2004, *A.A. v. Azerbaijan*, decision adopted on 25 November 2005, para. 6.7

[2] See, for example, communications No. 305/2006, *A.R.A. v. Sweden*, decision adopted on 30 April 2007, para. 6.2; No. 247/2004, *A.A. v. Azerbaijan*, para. 6.8; No. 140/1999, *A.G. v. Sweden*, decision adopted on 2 May 2000, para. 6.2.